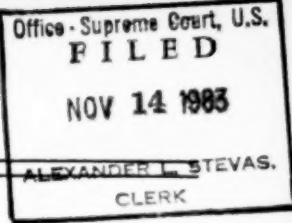


No. 83-592



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LORI L. OSTROSKY, JULIANNE OSTROSKY,
and HAROLD C. OSTROSKY,

Appellants,

vs.

STATE OF ALASKA,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALASKA

MOTION TO DISMISS OR AFFIRM

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I. INTRODUCTION AND STATEMENT OF THE CASE

This is a motion to dismiss an appeal taken from the Alaska Supreme Court's decision in State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) (copy attached as "Appendix I" to the Appellants' Jurisdictional Statement). The State of Alaska, appellee herein, alternatively requests this Court to summarily affirm the decision.

The Alaska Supreme Court held that the state laws which make permits for operating commercial fishing gear ("limited entry permits") freely transferable do not impermissibly discriminate on the basis of wealth and lineage, in violation of the equal protection clause of the fourteenth amendment to the United States Constitution. The Ostroskys, appellants herein, contend that this holding was incorrect. To appreciate how narrow this issue is, and that it does not present a substantial federal question, this Court must have more information about

Alaska's Limited Entry Act, AS 16.43.010 -- 16.43.380, than can be gleaned from the Ostroskys' Jurisdictional Statement.

A. Background of Limited Entry Act

Alaska's fisheries, and especially its salmon fisheries, are important to the State's inhabitants and to its economy. Fish and fishing, which have been of concern to Alaska since statehood, are discussed in two sections of Alaska's Constitution. Article VIII, section 3, states that "[w]herever occurring in their natural state, fish, wild-life, and waters are reserved to the people for common use." Alaska Const. art. VIII, § 3. Article VIII, section 15, further states that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State." Alaska Const. art. VIII, § 15.

Excessive commercial harvesting in the fisheries during the 1960's presented a tremendous threat to the fisheries and to the commercial fishermen economically dependent

upon them for their living. The electorate of the State recognized the need to protect its resources, and in 1972 amended Alaska's Constitution to explicitly authorize the State to limit the number of units of commercial fishing gear that can be operated in the State's fisheries. The amendment added the following language to article VIII, section 15: "This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State."

In response to this amendment, the State Legislature enacted the current version of the Limited Entry Act, AS 16.43.010 -- 16.43.380. Under the Act, the State determined which fisheries needed to be limited, how many permits to operate commercial fishing gear should be issued, and what criteria should be used to determine who

received the permits. Permits have been issued, and it is now illegal for any person to operate commercial fishing gear in a limited fishery unless he or she has a permit or is working for someone who has a permit. AS 16.43.140(a).

After the State decided to limit the number of persons who can operate commercial gear in certain fisheries, it had to decide whether limited entry permits should be transferable and, if so, on what basis. Following extensive hearings and debates, the Legislature decided that the interests it wanted to protect would be furthered most by making permits "freely transferable" to anyone able to participate actively in the fishery. Thus, as is true of traditional property rights, permits can be sold, transferred by gift, or bequeathed freely. If the holder of a permit does not make any inter vivos or testate disposition of it, the permit will pass to his or her spouse. If there is no surviving spouse, the permit will

then pass through intestate succession.
AS 16.43.150(h); AS 16.43.170(b).

The interests that the State Legislature wanted to protect by making permits freely transferable are enumerated as follows in the Alaska Supreme Court's decision in State v. Ostrosky:

[1] By making permits inheritable and transferable among family members, the Act ensures that a fishing family will be able to continue to fish if the permit holder dies or is disabled, thus protecting the family's source of income and its investment in vessel and gear. This prevents economic distress among fishermen and those dependent upon them for a livelihood.

[2] By making it possible for a person who has fished one permit to purchase a different one, the Act allows fishermen to move to more profitable gear types (from hand troll to purse seine, for instance) and to fish a different area when their usual area has bad runs. This prevents economic distress among fishermen, and retains the traditional mobility. . . .

[3] By making permits salable, the Act creates a market for them. Price depends largely on the state of the fishery. . . . Thus, in order to keep the fisheries healthy, fishermen will obey

conservation laws, assist in the apprehension of violators of those laws, and willingly contribute to aquaculture programs.

[4] By giving permit holders an incentive--money--to transfer their permits, the Act prevents the creation of a closed class of fishermen. . . . [T]he number of transfers to date has been very large.

[5] By making the acquisition of a permit certain by payment of the purchase price, the Act allows fishermen to plan where they will fish, what type of gear they will use and what investments in vessels and gear they can prudently make.

[6] By not setting up any complex eligibility formulas for new entrants, the Act makes the transfer system readily understandable to those it will affect.

[7] By not requiring the [Limited Entry] Commission to get involved in transfers to an extent beyond the simple processing of transfer applications and the certification that the proposed transferee has the present ability to fish, the Act eases the Commission's administrative burden, and allows it to focus its attention on other necessary duties, such as the setting of optimum numbers for limited fisheries and the decision whether presently open fisheries should be limited.

Appendix I at 19a-20a.

The three most important interests can thus be summarized as follows: (1) preventing economic distress to those dependent upon commercial fishing, (2) conserving the fisheries, and (3) avoiding unjust discrimination in the allocation of the permits.

B. Procedural History

The Ostroskys are three persons who wish to operate commercial fishing gear in Alaska's most valuable fishery, the Bristol Bay salmon fishery. They were not among the persons initially issued permits for this fishery, although Hank Ostrosky would have received one had he applied for it. See Appendix A. The Ostroskys contend that in 1979 they could not afford to purchase a permit or obtain one by other means. Despite their lack of a permit, they proceeded to fish in Bristol Bay. They were subsequently arrested and convicted for operating commercial gear and possessing commercially caught fish without valid entry permits. Their appeal arises from these convictions.

The Ostroskys moved for post-conviction relief in the State Superior Court under Alaska Rule of Criminal Procedure 35. They raised several constitutional arguments, based upon both the Alaska and the United States Constitutions. These arguments included the claim that the State laws making entry permits freely transferable impermissibly discriminate on the bases of wealth and lineage. The Alaska Superior Court concluded that the Ostroskys' arguments under the Federal Constitution were without merit. It held, however, that the transferability laws violate the equal protection clause of the Alaska Constitution. See State v. Ostrosky, Appendix I at 4a & n.3. On appeal, the Alaska Supreme Court reversed, finding all of the Ostroskys' arguments to be without merit. In particular, the Alaska Supreme Court held that the state laws making entry permits freely transferable have a fair and substantial relation to the legitimate interests

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sought to be protected by the State Legislature. Appendix I at 19a-21a.

C. Clarification of Appellants' Statements

The only issue that the Ostroskys have raised in this Court is whether AS 16.43.150(h) and AS 16.43.170(b), which make entry permits freely transferable, impermissibly discriminate on the bases of wealth and lineage in violation of the equal protection clause to the fourteenth amendment to the United States Constitution. Jurisdictional Statement at (i). The Ostroskys repeatedly suggest that much broader issues are before this Court. This inaccuracy is compounded by their suggestions that the Limited Entry Act has a far greater impact on fishing in Alaska than it does. The State will attempt to clarify the most significant overstatements made by the Ostroskys.

First, the Ostroskys state that "[t]here are two classes of people created by the Alaska Limited Entry Act: [t]hose families who are permitted to fish for salmon and

those who are not." Jurisdictional Statement at 7. This is inaccurate. The Limited Entry Act does not place any restrictions on "subsistence fishing" (taking fish from rural areas for personal use) or fishing for "personal use" (taking fish from other than rural areas for personal use). See AS 16.05.930. The Act also does not in any way restrict sport fishing, which all persons may engage in upon payment of a minimal fee. AS 16.05.330. Finally, the Act does not even regulate all commercial fishing. Not all fisheries have been limited, and anyone may operate commercial fishing gear in an open fishery. 1/ More important, however, anyone may participate in commercial fishing as a

1/ It is only the salmon and herring fisheries that have been "limited," i.e., there are a finite number of permits available for operating commercial fishing gear to harvest salmon and herring. The halibut, sablefish, abalone, crab, shrimp, clams, and scallops fisheries, as well as other fisheries, have not been limited. 20 Alaska Admin. Code 05.010 -- 20 Alaska Admin. Code 05.990.

crew member for someone who holds a permit. AS 16.43.140(b). It is only operating commercial fishing gear in limited fisheries that has been restricted by the Act. AS 16.43.140(a). As a practical matter, the Limited Entry Act merely regulates the "big business" of commercial fishing. There are two classes of persons created by the Act, but they are not "[t]hose . . . who are permitted to fish for salmon and those who are not." Instead, the two classes are those who may run a commercial fishing business, and those who may not.

Second, the Ostroskys suggest that the criteria used to initially distribute the limited entry permits are at issue in this appeal. They state that the Limited Entry Act "gives fortuitously selected persons . . . commercial access to salmon in the significant fisheries of Alaska." Jurisdictional Statement at 2 (emphasis added). The initial recipients of entry permits were not "fortuitously selected." They were selected

on the basis of the degree of economic hardship they would suffer if they were not issued permits. AS 16.43.250(a). In a different case, the Alaska Supreme Court has already held that the ranking system established by the State Legislature to determine who would initially receive entry permits is constitutional. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980). That issue is not a part of the Ostroskys' appeal to this Court.

Third, the Ostroskys state that the Limited Entry Act gives the "heirs in perpetuity" of initial permit recipients "exclusive commercial access to salmon . . . in Alaska." Jurisdictional Statement at 2. This also is not accurate. The "heirs in perpetuity" of permit holders do not have guaranteed access to commercial fishing in Alaska. As the State has repeatedly indicated, entry permits are freely transferable. The heir of a permit holder can receive the permit, but only under the following

circumstances: (1) if the initial permit holder does not sell the permit to anyone else; (2) if the permit holder does not make a gift of the permit to someone else; (3) if the permit is not revoked by the State; and (4) if the permit holder does not bequeath the permit to someone other than his or her heirs. This is a far cry from being given "exclusive commercial access to salmon . . . in Alaska."

The Ostroskys' fourth overstatement is that "Alaska has created by its Limited Entry Act exclusive rights and special privileges in certain select families by giving these families perpetual rights in a publicly owned resource to the exclusion of all others forever." Jurisdictional Statement at 5. In fact, permits are issued only to individuals, and not to families. See AS 16.43.140(a). Furthermore, and at the heart of this appeal, these permits are freely transferable and thus have not been placed exclusively in the hands of a few, select individuals "forever."

Fifth, the Ostroskys suggest that permits may only be purchased by paying their entire cost in cash at the time of the sale. The Ostroskys state that they "were not born into a family which has been bestowed a limited entry permit, nor do they have the \$100,000 necessary to buy a permit." Jurisdictional Statement at 4-5. The clear implication from this statement is that, without \$100,000 in cash, the Ostroskys cannot obtain a permit. As noted by the Alaska Supreme Court, the average price of a permit is \$50,000, rather than the \$100,000 necessary to purchase a permit for the Bristol Bay fishery, which is the most valuable fishery in Alaska. State v. Ostrosky, Appendix I at 14a n.8. Thus, it is unusual that a permit costs \$100,000. Even so, the State has created well-funded loan programs specifically designed to make it feasible for any person to purchase an entry permit. AS 16.10.310(a)(1).

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Under two different programs, the State can and does loan as much as either 90% or 100% of the appraised value of an entry permit to enable a person to purchase it. Depending upon the program, the loans may be for as much as or more than \$100,000. Under either program, the interest rate cannot exceed 10.5%, and the loan may be for a term as long as 15 years. AS 16.10.-320(a). 2/ The Ostroskys fail to mention

2/ The relevant necessary qualifications for a 90% loan are that the individual must have held a commercial fishing license (as a permit holder or as a crew member) for the year immediately preceding the date of the loan application and any other two of the past five years. Furthermore, the individual must have actively participated in the fishery during those periods. AS 16.10.-310(a)(1)(A). The relevant necessary qualifications for a 100% loan are that the individual does not have any other "occupational opportunities" besides commercial fishing, or that he or she is economically dependent upon commercial fishing for a livelihood and commercial fishing has been a "traditional way of life" for the individual. AS 16.10.310(a)(1)(B). These requirements ensure that the borrower has experience in commercial fishing, which increases the probability that the borrower will make a

these loan programs when asserting that the Limited Entry Act discriminates against the poor.

Sixth, this case is not the "functional culmination" of Bozanich v. Reetz, 297 F. Supp. 300 (D. Alaska 1969), rev'd, 397 U.S. 82 (1970) (Jurisdictional Statement at 7), nor is it identical to State v. Huse, 59 P.2d 1101 (Wash. 1936), as stated by the Ostroskys. Jurisdictional Statement at 11. In Bozanich, a federal district court ruled that a former version of Alaska's Limited Entry Act violated the equal protection clause to the fourteenth amendment because

(Footnote continued)

profit in his business and thus be able to pay back the loan. The requirements are also consistent with a major purpose of the Limited Entry Act, which is to prevent economic distress to those fishermen who are economically dependent upon commercial fishing for their livelihood. If an individual does not have any prior experience in commercial fishing, he or she is not likely to be economically dependent upon commercial fishing.

the qualifications required to obtain a gear license (equivalent to an entry permit under the current Act) were "arbitrary and irrational." 297 F. Supp. at 306. The transferability of licenses was not at issue. The issue, instead, was the validity of the criteria used to determine who would receive the licenses in the first instance. That subject is not before the Court in this appeal. 3/

3/ Bozanich is further distinguishable because of its reliance upon Morey v. Doud, 354 U.S. 457 (1957), when concluding that the discrimination against certain fishermen violated equal protection. Morey v. Doud is the only case since 1950 in which this Court struck down an economic regulation on equal protection grounds alone. That decision was explicitly overruled in New Orleans v. Dukes, 427 U.S. 297 (1976), in which this Court stated that "the reliance on the statute's potential irrationality . . . was a needlessly intrusive judicial infringement on the State's legislative powers." 427 U.S. at 306. Accordingly, were Bozanich to be decided anew, it seems evident that a different result would be reached. As it is, the district court's decision in Bozanich was reversed by this Court on the basis that the district court should have abstained from deciding the case so that the issue could be

The Washington Supreme Court's decision in State v. Huse, 59 P.2d 1101 (Wash. 1936), also relied upon by the Ostroskys, is similarly distinguishable. Once again, the issue before that court was the constitutionality of the criteria used to determine who would receive gear licenses. The transferability of the permits was not before the court. Furthermore, the case was decided in 1936, long before New Orleans v. Dukes, 427 U.S. 297 (1976), was decided. See note 3 supra. Accordingly, Huse, like Bozanich, is of no precedential value in determining the issues raised by the Ostroskys. This appeal merely concerns the constitutionality of State laws that make limited entry permits freely transferable. These laws are, in

(Footnote continued)

resolved by the state courts. Reetz v. Bozanich, 397 U.S. 82, 87 (1970).

short, economic regulations, which can easily withstand examination under the equal protection clause.

Finally, this appeal does not involve any issues of discrimination based upon residency, as suggested by the Ostroskys. See Jurisdictional Statement at 7, 11-12. Limited entry permits, like sport fishing licenses and commercial fishing licenses for crew members, may be held by anyone, resident or nonresident. The only difference between the three is that, in order to preserve the fisheries, the number of entry permits available has been limited. Tables indicating the significant number of permits initially issued to and currently held by nonresidents are attached as Appendix B.

Having established what is not at issue in this appeal, it is now possible to address the single, narrow issue that is before this Court: whether Alaska's laws making entry permits freely transferable violate the equal protection clause of the fourteenth amendment

to the United States because they impermissibly discriminate on the bases of wealth and lineage.

II. SUMMARY OF THE ARGUMENT

The Ostroskys correctly assert that the State has the power to preserve and regulate the exploitation of its valuable resources, including its salmon fisheries. Jurisdictional Statement at 8-9. The Ostroskys also correctly assert that the State must exercise this power in conformity with the United States Constitution. Id. (citing Toomer v. Witsell, 334 U.S. 385 (1948); Douglas v. Seacoast Products, 431 U.S. 265 (1977)). The Ostroskys are not correct, however, in asserting that the State has violated the Constitution by making entry permits freely transferable.

The only means by which this Court could conclude that the State laws at issue violate equal protection would be by creating new law in this area. Under this Court's existing

decisions, there simply is no authority supporting the Ostroskys' constitutional claims. There are several reasons why these claims must fail.

First, the transferability provisions do not create any classifications based upon lineage because the heirs of a permit holder do not have an absolute right to receive the permit. The equal protection clause of the fourteenth amendment can only be violated if a state law creates impermissible classifications. If a state law does not create classifications at all, it cannot create impermissible classifications.

Second, to the extent that the transferability provisions do create classifications, based on wealth, or even lineage, the proper standard of review to be applied by this Court is the rational basis test. A higher standard of review would be inappropriate, first, because operating commercial fishing gear is not a fundamental right for purposes of equal protection analysis under the United

States Constitution, and second, discrimination on the bases of wealth and lineage does not create suspect or quasi-suspect classifications.

Finally, the State laws making limited entry permits freely transferable are rationally related to the legitimate State interests of (1) preventing economic distress to those dependent upon commercial fishing, (2) conserving the fisheries, and (3) avoiding unjust discrimination in the allocation of the permits. Accordingly, these laws do not violate the equal protection clause of the fourteenth amendment.

III. ARGUMENT

A. The Transferability Provisions Do Not Create "Lineage-Based Classifications"

The Ostroskys assert that the State laws governing the transferability of entry permits create classifications based upon lineage. Jurisdictional Statement at 12. The Ostroskys have not cited any reported decisions or treatises that discuss "lineage-

based classifications," and it is not entirely clear what they mean by the term. It is unreasonable to suppose that a classification based upon lineage is created every time a benefit conferred upon an individual is inheritable. To do so would be to suggest that governmental entities may only grant a life-estate in the benefits they confer upon individuals.

Presumably, a lineage-based classification is one by which a benefit is conferred upon an individual and his or her heirs only. This would be in the nature of a "fee tail," reminiscent of the feudal era. When a fee tail is granted, all persons except the heirs of the initial grantee are discriminated against with respect to being able to obtain the benefit or property at issue. Alaska's laws governing the transferability of entry permits obviously do not create this type of classification because, once again, the permits are freely transferable. Accordingly, the State's laws making limited entry

permits freely transferable do not create classifications based upon lineage.

The equal protection clause of the fourteenth amendment is violated only if a state law creates impermissible classifications. A state law that does not create any classifications cannot be held to create impermissible classifications. Thus, making entry permits freely transferable does not violate equal protection simply because the permits have value and are inheritable.

- B. To the Extent that the Transferability Provisions Do Create Classifications, the Proper Standard of Review to be Applied is the Rational Basis Test

Assuming that the State laws making limited entry permits freely transferable do create classifications on the bases of both wealth and lineage, then they do discriminate on those bases. This Court has repeatedly held, however, that most legislative classifications do not violate equal protection:

The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification. . . . [Citation

omitted.] Most laws classify, and many affect certain groups unevenly, even though the law itself treats them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern.

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 271-72 (1979). As this Court stated in New Orleans v. Dukes, 427 U.S. 297, 303-04 (1975):

Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along the suspect lines . . . ; in the local economic sphere, it is only the invidious discrimination, the

wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.

Thus, the "rational basis" standard of review is the appropriate test to apply to determine whether these laws violate equal protection, unless the laws impinge upon a fundamental right or create suspect or quasi-suspect classifications.

1. Operating commercial fishing gear in certain designated fisheries is not a fundamental right under the equal protection clause of the United States Constitution

Alaska's laws making entry permits freely transferable do not impinge upon any right recognized as "fundamental" under the equal protection clause of the United States Constitution. The Ostroskys claim that the State's laws making entry permits freely transferable have the effect of preventing them from operating commercial fishing gear in the Bristol Bay salmon fishery. They contend that this effect impinges upon their "right to engage in a chosen occupation."

Having "established" these premises, the Ostroskys assert that the right to engage in a chosen occupation is a "sensitive and fundamental personal right." Jurisdictional Statement at 11.

The right to engage in a chosen occupation is unquestionably important, but it is not "fundamental" under the equal protection clause of the United States Constitution. Schwartz v. Board of Bar Examiners, 353 U.S. 232, 238-39 (1957); Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 487-89 (1955). The decisions cited by the Ostroskys, Hicklin v. Orbeck, 437 U.S. 518 (1978), Baldwin v. Montana Fish & Game Commission, 436 U.S. 371 (1978), and Toomer v. Witsell, 334 U.S. 385 (1948), only address the issue of whether it is permissible to discriminate against nonresidents under the privileges and immunities clause of the United States Constitution. The Ostroskys apparently fail to appreciate that the rights and interests protected under the privileges and immunities

clause are broader than, rather than co-extensive with, the rights and interests protected by heightened scrutiny under the equal protection clause. As this Court stated in San Antonio School District v. Rodriguez, 411 U.S. 1, 33-34 (1973):

It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether [a particular right] is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether [the right is] explicitly or implicitly guaranteed by the Constitution.

The right to engage in a chosen occupation is not explicitly or implicitly guaranteed by the Constitution. Accordingly, the Ostroskys' allegation that their right to operate commercial fishing gear in Bristol Bay has been impinged upon by the State's statutes does not require this Court to depart from the rational basis standard of

review applicable when reviewing economic regulations for violations of equal protection.

2. Discrimination on the basis of wealth or lineage does not create suspect or quasi-suspect classifications

The Ostroskys next contend that the State's laws at issue in this appeal should be reviewed under a higher standard than the rational basis test because those laws create suspect or quasi-suspect classifications. Jurisdictional Statement at 11-13. This contention is unsupported by the decisions of this Court.

As previously indicated, the State laws making entry permits freely transferable do not create "lineage-based classifications." Even if this Court were to view the issue differently, however, the Ostroskys have submitted no authority in support of their contention that economic regulations creating lineage-based classifications are to be reviewed with closer scrutiny than the

normally applicable rational basis test. The Ostroskys have cited Jimenez v. Weinberger, 417 U.S. 628 (1974) (Jurisdictional Statement at 12-13), but it only addresses classifications based upon legitimacy. There is a great difference between classifications based upon legitimacy and classifications based upon "lineage." Unlike illegitimate children, nonheirs are not a discreet and insular minority, historically discriminated against or otherwise in need of special protection under the Federal Constitution. Accordingly, there is no authority for the proposition that State laws allegedly discriminating on the basis of lineage are to be reviewed under a higher standard than the rational basis test.

To the extent that Alaska's statutes make classifications on the basis of wealth, there is still no basis for reviewing the laws under anything other than the rational basis standard of review. This Court specifically stated in San Antonio School District

v. Rodriguez, 411 U.S. 1, 29 (1973), that it "has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny."

Even if this Court eventually were to hold that certain forms of wealth discrimination must meet a higher standard of scrutiny than the rational basis test, the "wealth discrimination" complained of in this case would not be included in the Court's list. San Antonio indicates that, whatever else this Court may hold in the future, the rational basis standard of review will remain applicable when the challenged regulation does not cause an absolute deprivation of the desired benefit. Id. at 23-24. That is the situation presented by this case.

Although the State's laws making entry permits freely transferable arguably make it more difficult for poor persons to obtain entry permits because the permits have a market value, these persons are not absolutely deprived of the privilege of commercially

fishing in Alaska. The State's extensive loans programs alleviate much of the burden placed upon poor people who wish to obtain entry permits. Furthermore, no one is precluded from participating in commercial fishing as a crew member for someone who holds a valid permit. A person can acquire sufficient experience and money as a crew member to purchase or finance his or her own permit. Additionally, no one is precluded from operating commercial fishing gear in any of the fisheries that have not been limited. Finally, there are several means by which anyone may obtain a permit without paying the fair market value for it. Inasmuch as permits are freely transferable, anyone may receive a permit as a gift from the holder. Also, a person may receive a permit as the legatee of a deceased holder. Similarly, a person may receive a permit upon the death of the holder if that person is the heir of the holder and the holder did not make any other disposition of the permit. Thus, the State's

laws making entry permits freely transferable do not absolutely deprive poor persons of the privilege of commercially fishing in Alaska. Accordingly, there is no basis for applying a heightened standard of review to the wealth-based classification arguably created by the laws.

C. The State's Laws Making Entry Permits Freely Transferable Are Rationally Related to Legitimate State Interests

The Alaska Supreme Court held that the State laws making entry permits freely transferable are based on legitimate public purposes. It further held that the classifications created by the State laws are reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Appendix I at 17a-21a. The Ostroskys have failed to discuss these holdings. Apparently, they recognize that Alaska's statutes making permits freely transferable are rationally related to legitimate state interests.

This Court noted in Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981):

States are not required to convince the courts of the correctness of their legislative judgments. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." Vance v. Bradley, 440 U.S., at 111.

This Court further stated in United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 179 (1980):

Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," Flemming v. Nestor, 363 U.S., at 612, because this Court has never insisted that a legislative body articulate its reasons for enacting a statute.

The closest the Ostroskys come to discussing the State's interests in making entry permits freely transferable, or the relationship between those interests and the statutes at issue, is the following single paragraph:

////

The original issuance of limited entry permits required that the applicants be ranked according to the degree of economic dependence upon the fishery, the extent of past participation, the availability of an alternative occupation, and the investment in gear and vessel. A.S. 16.43.250. As questionable as these original issuing criteria are, any subsequent transfers by inheritance or windfall purchase bears no relationship to these stated purposes.

Jurisdictional Statement at 11. Even this does not discuss the purposes of the Limited Entry Act, let alone the State's reasons for making the permits freely transferable.

Three of the major purposes of the Limited Entry Act are: (1) to prevent economic distress to those dependent upon commercial fishing; (2) to conserve the fisheries; and (3) to avoid unjust discrimination in the allocation of the limited number of permits. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1265 (Alaska 1980). Making entry permits freely transferable is rationally related to each of these legitimate purposes.

The State's laws making permits freely transferable prevent economic distress to those dependent upon commercial fishing in at least two ways. First, if a permit holder dies or becomes disabled, the permit may be transferred to another member of the family, who can continue running the commercial fishing operation. If transferring the permit were not allowed, the family faced with such a situation would obviously sustain economic hardship as a result of not being able to continue the commercial operation. Second, if the fishery for which a person holds a permit is not doing well, that person can continue his or her commercial fishing operations by purchasing a permit (as anyone else can) for another area that is doing better. If permits were not freely transferable, the individual faced with this situation would obviously sustain economic hardship because he or she could not make a living from operating his or her gear in the area designated in the permit.

The laws making permits freely transferable also further the purpose of conserving the fisheries. By letting permits be sold, the laws create a market for them. This gives permit holders a "stake" in the fishery because their permits will obviously be worth more if the fishery is doing well. In turn, this "stake" in the fishery provides permit holders with an incentive to conserve the fishery, rather than exploit it, so that permit values will become and remain high. It similarly encourages the permit holder to report known violations of fish and game laws, thereby assisting the State in preventing others from exploiting the fishery.

Making permits freely transferable also furthers the purpose of avoiding unjust discrimination in the allocation of the permits because all persons have an equal opportunity to purchase or receive permits from those who have them. If permits are not freely transferable, then some criteria or standard would have to be adopted by the State to determine

how and to whom they would be transferred. Any such criteria or standard would be vulnerable to the very arguments made by the Ostroskys in this case; namely, that some segment of the population is being impermissibly discriminated against.

Finally, making entry permits freely transferable prevents a closed class of persons from holding the permits. Statistics kept by the State demonstrate that permits are being transferred, as intended by the State. Appendix C.

In accordance with Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981), New Orleans v. Dukes, 427 U.S. 297, 297 (1975), and Dandridge v. Williams, 397 U.S. 471, 485-86 (1970), Alaska's challenged laws rationally further legitimate State interests, and thus do not violate the equal protection clause of the fourteenth amendment.

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IV. CONCLUSION

This appeal presents a very narrow question to this Court. It does not involve the constitutionality of limiting entry into the commercial fishing industry. It also does not involve the constitutionality of the criteria used to initially distribute the entry permits. Finally, it does not involve any issues of distinctions based on residency.

There is only one issue raised in this appeal: whether Alaska's laws making limited entry permits freely transferable violate the equal protection clause of the fourteenth amendment to the United States Constitution. There are no fundamental interests at issue, and the State's laws do not create suspect or quasi-suspect classifications. The laws are merely economic regulations.

Thus, the only determination that need be made is whether Alaska's laws are rationally related to legitimate state interests. The State has demonstrated that they are.

The arguments presented in the Ostroskys' Jurisdictional Statement do not indicate that this is a close question. The constitutionality of these economic regulations is sufficiently apparent so that this Court should either dismiss the Ostroskys' appeal, because it fails to present a substantial federal question, or summarily affirm the Alaska Supreme Court's decision in this case.

Respectfully submitted,

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APPENDIX A

AFFIDAVIT

I, Deborah S. Boyd, of the Commercial Fisheries Entry Commission, Pouch KB, Juneau, Alaska 99811, do hereby swear that the following is true to the best of my knowledge and belief:

1. I am an Application Technician for the Commercial Fisheries Entry Commission and in that capacity, custodian of all commercial fishing licensing and landing records for those fisheries under entry limitation.
2. Based upon a review of these records the Commission could have verified twenty-two (22) points Harold C. Ostrosky toward an entry permit application for the Bristol Bay drift gill net fishery as described below:
 - 3 points - 1971 gear license holder participation
 - 2 points - 1970 gear license holder participation
 - 3 points - 1969 gear license holder participation and consistent participation (20 AAC 05.630(a)(1))
 - 8 points - 1960 and 1962-68 gear license holder participation (20 AAC 05.630(a)(2) and 20 AAC 05.630(a)(3))
 - 6 points - investment in vessel (20 AAC 05.630(b)(3)(a))

22 points - total
3. Other points could not be verified from state records but might be verified by submission of tax returns (20 AAC 05.630(b)(1) and affidavits of his actual fishing history in the years 1970 and 1971 (consistent participation).

Further affiant sayeth not.

Date: January 20, 1982

Deborah S. Boyd
Signature

Subscribed and sworn to before me this 20th day of January, 1982.

Karen F. Wells
Notary Public for Alaska
Commission Expires 8-7-84

(Permits were awarded to applicants who could verify 17 or more points.)

Table 3

Total Number of Initial Permit Holders by Fishery and Resident Type, 1975-1982^x

	All Permits Issued To					All Transferable Permits Issued To ^{xx}					All Permits	
	RURAL LOCAL	RURAL NO-LOC	URBAN LOCAL	URBAN NO-LOC	NON-RE-SIDENT	RURAL LOCAL	RURAL NO-LOC	URBAN LOCAL	URBAN NO-LOC	NON-RE-SIDENT	ALASKAN TOTAL	GRAND TOTAL
Limited in 1975												
Southeast Seine	92	0	119	0	204	92	0	119	0	204	211	519
Southeast Drift	82	0	225	3	156	82	1	225	3	156	311	467
Power Trawl	200	3	452	9	277	200	3	452	9	277	666	943
Yakutat Set Net	124	3	0	21	18	124	3	0	21	18	148	166
PWS Seine	164	6	14	18	35	164	6	14	18	35	204	239
PWS Drift	334	19	11	28	139	334	19	11	28	139	392	531
PWS Set Net	17	0	4	1	7	17	0	3	2	7	23	30
Cook Inlet Seine	47	0	29	1	8	47	0	29	1	8	77	77
Cook Inlet Drift	109	8	242	12	184	109	8	242	12	184	371	555
Cook Inlet Set Net	193	24	445	24	34	193	24	445	24	34	688	744
Kodiak Seine	75	14	159	20	168	75	14	159	20	168	268	374
Kodiak Beach Seine	11	2	18	1	2	11	2	17	1	1	32	34
Kodiak Set Net	42	2	78	14	50	42	2	78	14	50	136	186
Chignik Seine	29	12	0	28	21	29	12	0	28	21	69	98
Pen/Aleutian Seine	101	0	0	3	14	101	0	0	3	14	104	118
Pen/Aleutian Drift	98	0	0	14	44	98	0	0	14	44	112	156
Pen/Aleutian Set Net	94	0	0	8	7	94	0	0	8	7	104	111
Bristol Bay Drift	641	129	0	224	732	641	129	0	224	732	994	1726
Bristol Bay Set Net	573	30	0	163	150	506	29	0	148	137	768	918
	3032	255	1794	595	2224	2962	253	1794	588	2210	5678	7902
Limited in 1976												
Upper Yukon Gill Net	56	3	12	1	1	56	3	12	1	1	72	73
Upper Yukon Fishwheel	113	2	14	1	0	113	2	14	1	0	130	133
Kuskokwim Gill Net	663	1	170	0	0	661	1	170	0	0	834	834
Ketzebue Gill Net	53	1	157	7	1	53	1	157	7	1	218	219
Lower Yukon Gill Net	688	7	0	11	1	688	7	0	11	1	706	707
Horton Sd Gill Net	174	1	23	2	0	174	1	23	2	0	200	200
	1747	15	376	22	3	1743	15	376	22	3	2160	2163
Limited in 1977-78												
SE Harr Seine	1	0	39	0	3	1	0	39	0	3	40	43
SE Harr Gill Net	0	0	43	1	10	0	0	43	1	10	49	59
PWS Harr Seine	27	20	3	15	5	27	20	3	15	5	80	93
Cook Inlet Harr Seine	24	1	24	3	3	24	1	24	13	3	44	49
	57	21	109	31	26	57	21	109	31	26	238	264
Limited in 1980												
Hand Trawl	287	1	366	9	33	287	1	366	9	33	663	696
PWS Harr Gill Net	13	0	7	0	4	13	0	7	0	4	20	24
	300	1	373	9	37	300	1	373	9	37	683	720
Overall Total	8884	888	8884	888	888	8884	888	8884	888	888	8884	8884
	8134	292	2654	677	2290	8064	290	2652	662	2276	8759	11049

^x The table includes 18 permits which were later revoked because of administrative error, forfeit, or criminal action.
^{xx} By 1932 twelve non-transferable permits had become transferable through adjudication and one transferable permit had become non-transferable through re-examination of points awarded.

Table 4

1982 Year-End Distribution of Permit Holders by Fishery and Resident

DRAFT

	All Permits Held By						All Transferable Permits Held By**						All Permits	
	RURAL LOCAL	RURAL NO-LOC	URBAN LOCAL	URBAN NO-LOC	NON-RE-SIDENT	DOC	RURAL LOCAL	RURAL NO-LOC	URBAN LOCAL	URBAN NO-LOC	NON-RE-SIDENT	DOC	ALASKAN TOTAL	GRAND TOTAL
Limited in 1975														
Southeast Seine	62	0	121	2	229	0	62	0	121	2	229	0	185	414
Southeast Drift	82	1	231	3	149	0	82	1	231	3	149	0	317	466
Powder Troll	203	2	491	17	224	3	203	2	491	17	224	3	716	940
Yakutat Set Net	120	4	0	19	21	0	120	4	0	19	21	0	143	164
PM5 Seine	130	15	15	29	70	0	130	15	15	29	70	0	189	239
PM5 Drift	302	20	31	51	147	0	302	20	31	51	147	0	384	531
PM5 Set Net	19	1	3	4	3	0	19	1	2	4	3	0	27	30
Cook Inlet Seine	38	1	36	0	2	0	38	1	36	0	2	0	75	78
Cook Inlet Drift	96	5	268	7	177	2	96	5	268	7	177	2	378	555
Cook Inlet Set Net	177	26	476	11	52	0	177	26	476	11	52	0	692	744
Kodiak Seine	77	10	171	26	92	0	77	10	171	26	92	0	284	376
Kodiak Beach Seine	7	2	19	2	3	1	7	2	18	2	2	1	31	34
Kodiak Set Net	15	5	104	12	50	0	15	5	104	12	50	0	136	186
Chignik Seine	38	10	0	24	18	0	38	10	0	24	18	0	72	90
Pen/Aleutian Seine	93	0	0	5	20	0	93	0	0	5	20	0	98	118
Pen/Aleutian Drift	80	3	0	14	59	0	80	3	0	14	59	0	97	156
Pen/Aleutian Set Net	81	3	0	10	15	0	81	3	0	10	15	0	94	109
Bristol Bay Drift	569	117	0	267	770	1	569	117	0	267	770	1	954	1724
Bristol Bay Set Net	447	45	0	210	214	0	447	45	0	199	201	0	702	916
****	****	****	****	****	****	****	****	****	****	****	****	****	****	****
Limited in 1976	2636	272	1946	713	2315	7	2576	265	1944	702	2301	7	5574	7889
Upper Yukon Gill Net	49	2	17	3	1	0	49	2	17	3	1	0	71	72
Upper Yukon Fishwheel	100	0	27	3	0	0	100	0	27	3	0	0	130	130
Kuskokwim Gill Net	650	4	164	9	2	0	650	4	164	9	2	0	829	831
Kotzebue Gill Net	48	3	152	13	3	0	48	3	152	13	3	0	216	219
Lower Yukon Gill Net	655	12	0	39	3	0	655	12	0	39	3	0	704	707
Horton Sd Gill Net	152	3	28	16	1	0	152	3	28	16	1	0	199	200
****	****	****	****	****	****	****	****	****	****	****	****	****	****	****
Limited in 1977-78	1652	24	390	83	10	0	1652	24	390	83	10	0	2149	2159
SE Harr Seine	1	0	36	0	3	2	1	0	36	0	3	2	39	42
SE Harr Gill Net	3	0	43	1	12	0	3	0	43	1	12	0	47	59
PM5 Harr Seine	26	20	2	30	15	0	26	20	2	30	15	0	78	93
Cook Inlet Harr Seine	22	1	27	10	9	0	22	1	27	10	9	0	60	69
****	****	****	****	****	****	****	****	****	****	****	****	****	****	****
Limited in 1980	52	21	108	41	39	2	52	21	108	41	39	2	224	263
Hand Troll	285	3	364	10	34	0	285	3	364	10	34	0	662	696
PM5 Harr Gill Net	16	0	6	0	2	0	16	0	6	0	2	0	22	24
****	****	****	****	****	****	****	****	****	****	****	****	****	****	****
****	301	3	370	10	36	0	301	3	370	10	36	0	684	720
****	****	****	****	****	****	****	****	****	****	****	****	****	****	****
Overall Total	4641	320	2816	847	2400	9	4581	313	2812	836	2306	9	8631	11031

* This table excludes 18 permits which were revoked by the Commission.

** By 1982 twelve non-transferable permits had become transferable through adjudication and one transferable permit had become non-transferable through re-examination of points awarded.

APPENDIX B

Reprinted from draft of E. Dinneford, N. Kamali & K. Schelly, Changes in the Distribution of Alaska's Limited Entry Permits, 1975-1982 (2d ed. 1983)

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APPENDIX C

Table 1
Statewide Transfer Data on Permanent Permits by Year
1975 - 1982

Year	Number of Permanent Permits *	Number of Transferable Permits *	Yearly # of Transfers From Initial Issues	Ratio of Transfers From Initial Issues to Transferable Permits	Yearly Number of Transfers **	Ratio of Transfers to Transferable Permits
75	6,762	6,762	568	0.08	598	0.09
76	9,173	9,160	650	0.07	776	0.08
77	9,772	9,788	780	0.08	1,108	0.11
78	9,975	9,893	777	0.08	1,315	0.13
79	10,104	10,014	557	0.06	1,289	0.12
80	10,132	10,040	522	0.05	1,060	0.11
81	10,204	10,112	505	0.05	1,092	0.11
82	11,031	10,937	553	0.05	1,144	0.10

Years *****	Number of Transferable Permit-Years *****	Total Transfers From Initial Issues *****	Ratio *****	Total Number of Transfers *****	Ratio *****
75 - 82	76,626	4,912	0.06	8,294	0.11

* 18 permits which have been revoked are excluded from the year of revoke forward.

**The number of transfers includes eleven loan foreclosures by the Department of Commerce and Economic Development and two transfers from the Department to other Alaskans.

Reprinted from draft of E. Dinneford, N. Kamali & K. Schelly, Changes in the Distribution of Alaska's Limited Entry Permits, 1975-1982 (2d ed. 1983)

APPENDIX D

Sec. 16.05.330. Licenses and tags required. (a) Except as otherwise permitted in this chapter, a person may not engage in sport fishing, including the taking of razor clams; in hunting, trapping, or fur dealing; in the farming of fish, fur, or game; or in taxidermy, without having the appropriate license or tag in actual possession.

(b) When obtaining the appropriate license or tag in (a) of this section, an applicant who asserts residency in the state shall provide the license vendor with the proof of residence that the department requires by regulation. (§ 1 art 11 ch 94 SLA 1959; am § 1 ch 61 SLA 1962; am § 1 ch 42 SLA 1968; am § 1 ch 140 SLA 1968)

Sec. 16.05.930. Exempted activities. . . .

. . . .

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs. . . .

Sec. 16.10.310. Powers of the department. (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.180 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during those periods, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, who

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial fishing for a livelihood and for whom commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

Sec. 16.10.320. Limitations on loans. (a) A loan under AS 16.10.310 — 16.10.370

(1) may not exceed a term of 15 years;

(2) may not bear interest exceeding 10-1/2 percent;

(3) shall be secured by a first priority lien and appropriate security agreement; and

(4) may not exceed 90 percent of the appraised value of the collateral used to secure the loan, except that a loan granted under AS 16.10.333 for the purchase of an Alaska limited entry permit may not exceed an amount determined in accordance with (f) or (h) of this section.

. . . .

(d) Loans made to a borrower under AS 16.10.310(a)(1)(A) may not exceed a total of \$300,000. Loans made to a borrower under AS 16.10.310(a)(1)(B) or (C) may not exceed a total of \$100,000.

. . . .

(f) Except as permitted in (h) of this section, a loan made under AS 16.10.310(a)(1)(A) and (B) for the purchase of an Alaska limited entry permit may not exceed 90 percent of the appraised value of the collateral used to secure the loan.

. . . .

(h) A loan for an entry permit under AS 16.10.310(a)(1)(B) may be made for up to 100 percent of the appraised value of the collateral used to secure the loan if the borrower demonstrates that (1) the borrower has at least three years of experience as a commercial fisherman in the fishery to which the entry permit applies; and (2) the borrower has not owned an Alaska limited entry permit in the year immediately preceding the application for the loan. In this subsection "three years of experience as a commercial fisherman in the fishery" means that for an accumulated total of three fishing seasons in the same fishery the borrower has actively participated in the commercial harvest of fish under the direction of a limited entry permit holder.

Sec. 16.43.010. Purpose and findings of fact. (a) It is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination.

(b) The legislature finds that commercial fishing for fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource. (§ 1 ch 79 SLA 1973)

Sec. 16.43.140. Permit required. (a) After January 1, 1974, a person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewmember or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued. (§ 1 ch 79 SLA 1973)

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal. . . .

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of the decedent's estate. (§ 1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977; am § 6 ch 83 SLA 1978; am § 1 ch 51 SLA 1980; am § 2 ch 47 SLA 1981)

Sec. 16.43.170. Transfer of entry permits. (a) Except as provided in AS 16.10.333 — 16.10.338 and in AS 44.81.230 — 44.81.250, entry permits and interim-use permits are transferable only through the commission as provided in this section and AS 16.43.180 and under regulations adopted by the commission.

(b) Except as provided in (c) and (e) of this section, the holder of an entry permit may transfer the permit to another person or to the commission upon 60 days' notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer the permit. If the proposed transferee, other than the commission, can establish present ability to participate actively in the fishery, the commission shall approve the transfer and reissue the entry permit to the transferee.

(c) If the number of outstanding entry permits for a fishery is greater than the optimum number of entry permits established under AS 16.43.290 — 16.43.300, the holder of an entry permit who qualified for that entry permit in a priority classification designated under AS 16.43.250(c) may transfer the permit only to the commission. The transfer to the commission shall be made under the buy-back provisions of AS 16.43.310 — 16.43.320.

(d) *[Repealed, § 9 ch 73 SLA 1977.]*

(e) Before the determination, under AS 16.43.290 and 16.43.300, of the optimum number of entry permits for a fishery, the holder of an entry permit who qualified for that entry permit in a priority classification designated under AS 16.43.250(c) may not transfer that permit unless the commission estimates that the optimum number for that fishery will be equal to or greater than the number of outstanding entry permits and interim-use permits. (§ 1 ch 79 SLA 1973; am § 1 ch 126 SLA 1974; am §§ 3, 4, 9 ch 73 SLA 1977; am § 7 ch 83 SLA 1978; am § 13 ch 72 SLA 1979; am § 2 ch 51 SLA 1980; am §§ 3, 4 ch 47 SLA 1981)

Sec. 16.43.250. Standards for initial issue of entry permits. (a) Following the establishment of the maximum number of units of gear for a particular fishery under AS 16.43.240, the commission shall adopt regulations establishing qualifications for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery. The regulations shall define priority classifications of similarly situated applicants based upon a reasonable balance of the following hardship standards:

(1) degree of economic dependence upon the fishery, including but not limited to percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, investment in vessels and gear;

(2) extent of past participation in the fishery, including but not limited to the number of years participation in the fishery, and the consistency of participation during each year.

(b) The commission shall designate in the regulations those priority classifications of applicants who would suffer significant economic hardship by exclusion from the fishery.

(c) The commission shall designate in the regulations those priority classifications of applicants who would suffer only minor economic hardship by exclusion from the fishery.

Alaska Criminal Rule 35. . . .

(c) **Post Conviction Procedure—Scope.** Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) that the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of Alaska;

(2) that the court was without jurisdiction to impose sentence;

(3) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that his sentence has expired, his probation, parole or conditional release have been unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; or

(7) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, when sufficient reasons exist to allow retroactive application of the changed legal standards;

may institute a proceeding under this rule to secure relief.